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HOLD: CLIFTON & SINGER, LLP, BOX #43

Wake County, NC 484
Laura M Riddick, Register Of Deeds
Presented & Recorded 05/16/2001 14:39:53
Book : 008922 Page : 01760 - 01768

STATE OF NORTH CAROLINA

PUBLIC UTILITIES
WITH
PRIVATE STREET
MAINTENANCE AGREEMENT

COUNTY OF WAKE

THIS AGREEMENT, being made as of this 1st day of May, 2001, by and between PULTE HOME CORPORATION, (hereinafter known as "Developer"), HILBURN TOWNHOME ASSOCIATION, INC., (hereinafter known as "Community Association"), and the CITY OF RALEIGH, North Carolina, (hereinafter known as the ("City");

WITNESSETH:

WHEREAS, Community Association will be the owner of private streets to be constructed by Developer within the Hilburn Subdivision, (the real property comprising the Hilburn Subdivision is described on Exhibit A attached hereto and incorporated by this reference); and

WHEREAS, Developer has installed public utility installations within a certain portion of the aforementioned private streets and has asked the City of Raleigh to accept ownership of the water and sewer lines located under such portion of the private streets, including maintenance responsibility; and

WHEREAS, the City, under the terms and conditions herein set forth, is willing to accept and maintain such public utility installations;

NOW, THEREFORE, in consideration of the premises, and other consideration, Developer, Community Association and City hereby covenant and agree:

1. THAT Developer is responsible for any and all expenditure of labor or materials required in the initial installation and erection of the public utility lines and private street system within the Hilburn development;

2. THAT UPON completion of the public utility and private street systems to City of Raleigh specifications, Developer shall convey the streets to Community Association and that portion (only) of the public utility lines which, in addition to serving the homes within the Hilburn subdivision, also serve homes which are not located within the Hilburn subdivision (said portion of such public utility lines being hereinafter referred to as the "Joint Use Public Facilities" to City, who shall each be responsible for future maintenance and repair of their respective systems;

3. NOTWITHSTANDING the foregoing, Community Association and not City shall be responsible for any and all repairs or patching of private streets when public utility repair work therein is necessary.

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4. IN THE EVENT repairs or patching of private streets following utility system repair work is not initiated and completed by Community Association within a reasonable time, following written notice, City shall have the right but not obligation to undertake and complete necessary repairs and patching at the expense of Community Association. Community Association shall establish and make periodic payments to the Escrow Fund, held by the City Finance Director, from which the City may draw funds to repair the streets following public utility repairs in such instances as the Community Association has failed to honor their obligations hereunder. Minimum annual deposits of FIVE THOUSAND DOLLARS (\$5,000.00), THE FIRST DUE July 30, 2001, shall be made until the fund plus accrued interest reaches THIRTY THOUSAND DOLLARS (\$30,000.00). Thereafter, Community Association shall annually replenish the fund so that a minimum deposit of THIRTY THOUSAND DOLLARS (\$30,000.00) is maintained. Until or unless the principal in the Escrow Fund reaches THIRTY THOUSAND DOLLARS (\$30,000.00), Developer shall be liable for reimbursing the City for its pavement repair costs in the event Community Association does not. Once the Escrow Fund reaches the prescribed amount, Developer shall thereafter be released from all obligations and liabilities under this Agreement.

5. City shall deposit and maintain the Escrow Fund along with its general fund but shall provide an annual accounting of the balance showing deposits, withdrawals and accrued interest at the rate received by City for short term investment funds. The City would be allowed to withdraw money from the escrow account when: (1) the Community Association failed to make street repairs after receiving ten (10) days written notice from City, (2) City actually completed the street repairs, (3) and City documented bills for its work at a charge not more than normally paid for like kind services in Wake County, North Carolina.

6. The term of this Agreement shall be perpetual, however the parties acknowledge that the likelihood of repairs to the utility system necessitating pavement patching or replacement is unknown, and that the amount of the escrow account deposits is merely a good faith estimate; the parties will periodically review the situation to consider the continued need for the escrow fund in light of actual experience. Community Association reserves the right to substitute a bond, letter of credit or other form of security for City held escrow fund created by this Agreement subject to approval of the City Finance Director, with such approval not to be unreasonably withheld.

7. The terms of this Agreement may be enforced through any proceedings at law or in equity, in suit for specific performance or recovery of damages for violation.

8. ALL NOTICES required herein shall be deemed given by depositing such in the United States Mail, first class, and addressed to:

TO CITY: Public Utility Director
 City of Raleigh
 222 West Hargett Street
 Raleigh, North Carolina 27602
 Telephone: (919) 890-3400
 Facsimile: (919) 890-3600

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TO ASSOCIATION: Hilburn Townhome Association, Inc.
Attn: Mr. Lawrence E. Lippincott
401 Harrison Oaks Boulevard
Cary, North Carolina 27513
Telephone: (919) 677-0122
Facsimile: (919) 677-0934

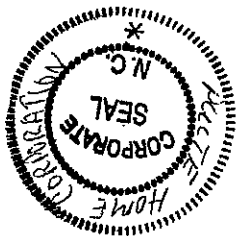
TO DEVELOPER: Pulte Home Corporation
Attn: Mr. Lawrence E. Lippincott
401 Harrison Oaks Boulevard
Cary, North Carolina 27513
Telephone: (919) 677-0122
Facsimile: (919) 677-0934

9. THAT DEVELOPER and ASSOCIATION, in consideration of the signing of this Agreement, for themselves, their agents, officials, employees and servants, agree not to discriminate in any manner on the basis of race, sex, handicap, color, creed, sexual orientation, age or national origin with reference to the subject matter of this Agreement no matter how remote. That they further agree in all respects to conform with the provisions and intent of City of Raleigh Ordinance No. 1969-889, as amended. This provision is hereby incorporated into this Agreement for the benefit of City and its residents, and may be enforced by action for specific performance, injunctive relief, or other remedy as by law provided.

10. This Agreement shall be binding upon the Parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the Parties hereto have hereunto set their hands and seals the day and year first above written.

PULTE HOME CORPORATION, a Michigan corporation



By: Lawrence E. Lippincott
Lawrence E. Lippincott, City President

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HILBURN TOWNHOME ASSOCIATION, INC.

By: *Lawrence E. Lippincott*
Lawrence E. Lippincott, President

CITY OF RALEIGH

By: *J. Russell Allen*
Name: J. Russell Allen
Title: City Manager

ATTEST:

BS. Z
Secretary

ATTEST:

Dain Smith
City Clerk



APPROVED AS TO FORM:

Jim Botwinick
(Associate) City Attorney

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ACKNOWLEDGEMENTS

STATE OF North Carolina

COUNTY OF Wake

I, a Notary Public of the County and State aforesaid, do hereby certify this 9 day of May, 2001, personally came before me Lawrence E. Lippincott, who, being by me duly sworn says that he is a City President of Pulte Home Corporation, a Michigan corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said writing was signed and sealed by him, on behalf of said corporation by its authority duly given and that he acknowledged the said instrument to be the act and deed of the corporation.

Witness my hand and official seal this 9 day of May, 2001.



E. Lippincott
Notary Public

My Commission Expires:

12/27/04